




Speech By  
**James Lister**

**MEMBER FOR SOUTHERN DOWNS**

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Record of Proceedings, 26 March 2019

**GUARDIAN AND ADMINISTRATION AND OTHER LEGISLATION AMENDMENT  
BILL**

 **Mr LISTER** (Southern Downs—LNP) (12.29 pm): I rise to make a contribution to the debate of the Guardianship and Administration and Other Legislation Amendment Bill 2018. I too am a member of the Legal Affairs and Community Safety Committee, and I would like to thank my colleagues for their work on this—the members for Toohey, Mansfield, Macalister, Mirani and Lockyer. I acknowledge the great work that the staff of the committee always do in supporting us. They are faultless.

As my honourable friend the member for Toowoomba South, the shadow Attorney-General, said previously, guardianship is a very serious matter. It pertains to life-changing events. Whenever we are involved in making law in these areas I think it is important that we really take note.

The objectives of this bill are to: amend the guardianship legislation to provide a focus on contemporary practice and human rights for adults with impaired capacity, enhance safeguards for adults with impaired capacity in the guardianship system and improve the efficiency and clarity of guardianship legislation; amend the Integrity Act 2009 to implement recommendations 1 and 2 of the Finance and Administration Committee report No. 19; and amend the Government Owned Corporations Act 1993 and the Public Interest Disclosure Act 2010 to implement recommendation 13 of the Parliamentary Crime and Corruption Committee Report No. 97 titled *Review of the Crime and Corruption Commission*.

This bill is substantially the same as the 2017 bill from the 55th Parliament, which lapsed, so we proceeded based on the submissions that were received by that committee. There were 18 in total and I would like to give voice to some of those submitters. Seven submissions were made by private individuals who have personally been impacted by the guardianship system. The Aboriginal and Torres Strait Islander Legal Service, Aged and Disability Advocacy Australia, TASC National, the Office of the Public Advocate, Queensland Nurses and Midwives' Union, Royal Australian and New Zealand College of Psychiatrists, Toowoomba Community Legal Service Incorporated and the Caxton Legal Centre, Medical Insurance Group Australia, Crime and Corruption Commission, Queensland Advocacy Incorporated and the Queensland Law Society all lodged submissions.

The Public Advocate raised concerns that the bill implements recommendation 14-14 of the review to provide clarity around when QCAT may make an order removing the Public Guardian if another appropriate person exists. However, the bill does not implement recommendations 14-13 and 14-15 to provide a similar process for the Public Trustee, and I will refer to that matter later in my speech.

The Caxton Legal Centre raised concerns that the bill broadens the power of the Public Guardian to investigate a complaint or allegation after an adult's death. The Caxton Legal Centre raised concerns that the bill does not provide for information sharing between the Public Guardian and the office of the coroner stating, 'We propose sharing protocols be introduced to avoid the coroner missing information or duplication of investigations.' We would like to hear the government's progress on developing such sharing protocols. I think the Caxton Legal Centre has made a good point.

TASC raised concerns that the bill does not recognise fluctuating capacity, breaching the United Nations Convention on the Rights of Persons with Disabilities and undermining both the objectives and the principles of the bill. TASC considered that this concern would be addressed if recommendation 15-1 was implemented. This recommendation provides that a tribunal may limit the exercise of a guardian to periods when the person has impaired capacity.

Aged and Disability Advocacy raised the concern that the bill does not require QCAT to consult with the adult and the family when making interim orders. QAI commented that they were aware of cases where the adult and families were only made aware that an order had been made after proceedings had been completed.

A number of individuals raised concerns about QCAT's handling of guardianship matters and the overall position of the Public Trustee. Considering that this bill contains a number of provisions relating to QCAT, it would have been reasonable for the review of QCAT that was commenced in 2012 to have been completed prior. The LNP will not be opposing this bill, as has been said. However, there are some areas of concern which have been raised by some of the stakeholders that we would like to highlight.

The Queensland guardianship system actively supports people to make important decisions about their future health and personal and financial needs and seeks to safeguard the rights of adults who may require another person or entity to make decisions on their behalf when they no longer have the requisite capacity to make those decisions for themselves. As the guardianship system is involved in decisions that impact every aspect of a person's life, it is important that we have a system that meets their needs and requirements. It has to be asked why has it taken Labor nearly a decade to implement any of the 317 recommendations of the Queensland Law Reform Commission report, which was completed in 2010? Long before I was a member of this House Anna Bligh was Premier and our current Premier Palaszczuk was a cabinet minister in that government. What was Labor up to? I would love to hear an explanation for that delay.

**Mr Hart:** Selling assets.

**Mr LISTER:** I take that interjection from the member. I think he said that they were busy selling assets. They were very busy selling assets. They were flat out selling assets.

**Mr Dick:** Not as busy as you. That is why you didn't do anything for three years. Nothing! Zero!

**Mr LISTER:** I take that interjection from the—

**Mr DEPUTY SPEAKER (Mr Stevens):** Order! The House will come to order.

**Mr LISTER:** Thank you, Mr Deputy Speaker, for that. I do take the interjection from the minister for some aspects of state development. I think—

**Mr DEPUTY SPEAKER:** Member, you have to refer to the member by their correct title.

**Mr LISTER:** The Minister for State Development—

**Mr Boothman:** He was Greenslopes. Then he went to Woodridge.

**Mr LISTER:** Yes, I was a bit confused, sorry. It is shameful that the Labor Party could come into this place and talk to anyone about asset sales. They have sold themselves into all shame. There is nothing left; they have sold the lot.

**Mr DEPUTY SPEAKER:** Member, could you return to the long title of the bill, please.

**Mr LISTER:** Thank you, Mr Deputy Speaker, for your guidance. It has taken the Labor Party over three years to introduce any of the recommendations. Even this bill does not implement all of the 317 recommendations. What is happening to the other recommendations? Can we please hear that from the Attorney-General? Half the work on implementing the recommendations had already been done by the former LNP government, who released the government response to the Law Reform Commission. The former LNP government also enacted some recommendations, including retaining and strengthening the independence of the Public Advocate and improving the ability of the Public Advocate to effectively perform its functions. It was, of course, the former LNP government that introduced the role of the Public Advocate and it is something of which we are eternally proud. The Public Advocate was granted additional powers to access information necessary to perform its function and report to the Attorney-General at any time on any systemic issues, which must be tabled in the parliament.

I return to the question of recommendations 14-13 and 14-15. The Public Advocate raised concerns that the bill implements recommendation 14-14 of the review to provide clarity around when QCAT may make an order removing the Public Guardian if an appropriate other person exists. However, the bill does not implement recommendations 14-13 and 14-15. The Public Advocate said—

... it is unclear why ... recommendation 14-13 has not been implemented in this Bill. That recommendation proposed amending section 14 so that the Tribunal should appoint the Public Trustee only if there is no other person who is appropriate and available for appointment as administrator, as is currently the case with the Public Guardian.

Further, the bill provides that guidelines will be developed to assist with the assessment of capacity but does not specify a date when the guidelines will be prepared. The Public Advocate raised concerns that the general and healthcare principles are difficult to understand and assess. They said—

I am aware that there has been a suggestion that the department could produce a version of the ... principles after the legislation has been passed. That would then require the department to be giving an interpretation of legislation, which is tantamount to giving legal advice and that is not what government agencies do.

A submitter proposed that sharing protocols be introduced to avoid the coroner missing information or duplicating investigations. As I have said, that is something that we would like to hear more about.

I have spoken about concerns surrounding QCAT. A number of individuals raised concerns about QCAT's handling of guardianship matters and the overall operation of the Public Trustee. The guardianship list has had the most significant increase in number of lodgements over the last year which is having a detrimental effect on QCAT's overall clearance rate. Guardianship matters have increased 21.5 per cent over the past four years, from just under 10½ thousand to just over 12½ thousand. This is no doubt going to get worse given our—

*(Time expired)*